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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,067	04/27/2000	Brian M. Mattson	MAT-P-99-002	2478
7590	09/20/2004		EXAMINER	
			O'CONNOR, GERALD J	
			ART UNIT	PAPER NUMBER
			3627	
DATE MAILED: 09/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/560,067</b>	Applicant(s) <b>Mattson</b>
Examiner <b>O'Connor</b>	Art Unit <b>3627</b>
	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on March 1, 2004 (Amdt "D").
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- 4)  Claim(s) 9-14, 21, 22, 24, 25, and 27-29 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 9-14, 21, 22, 24, 25, and 27-29 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on April 27, 2000 is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

- a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Preliminary Remarks***

1. This Office action responds to the amendment and arguments filed by applicant on March 1, 2004 (Paper № 21) in reply to the previous Office action, mailed January 22, 2004.
  
2. The amendment of claim 25 by applicant in Paper № 21 is hereby acknowledged.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over CyberDiner Internet Cafe Systems, in view of the Blue Ginger webpage at the Boston Globe website.

CyberDiner Internet Cafe Systems comprises a restaurant, the restaurant having personal computers connected to the Internet for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), the restaurant therefore inherently having within it (at each patron's computer) an apparatus comprising: an input means and a transmission means, wherein the obvious, self-evident method of use is to input real-time information into the

apparatus to be transmitted remotely from the restaurant (to the Internet) by the transmission means in real-time; a receiving means; a display means connected to the apparatus that displays the information; a processing means; an input means (information being displayed simultaneously while it is input into the processing means); and, a network (to which the patron's computer is connected) remotely receiving the information from the apparatus, the network being the Internet; but CyberDiner Internet Cafe Systems, however, does not specifically disclose that the real-time information to be entered into the apparatus would comprise real-time information concerning the restaurant, such as a review of the restaurant, nor does it disclose posting the entered and transmitted real-time information at a website outside of the restaurant for viewing by persons outside of the restaurant.

However, the Blue Ginger webpage at the Boston Globe website shows information concerning a restaurant (reviews of the restaurant) that has been entered into the Internet and posted at the website by patrons of the restaurant, where it is stored and accessed by computer, but the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time, while the restaurant patron was still in the restaurant.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have used the system and method of CyberDiner simultaneously with the system and method of the Blue Ginger webpage at the Boston Globe (i.e., to view and post to a restaurant review page for the CyberDiner restaurant at the same site as, and comparable to, the Blue Ginger page, <ae.boston.com/dining/restaurant/>, while using the Internet access at CyberDiner to do so),

so as to post a review of the CyberDiner restaurant on the Internet using the Internet access of the CyberDiner establishment, in order to post the review of the restaurant as quickly as possible, while the dining experience was still fresh in the mind of the reviewer.

5. Claims 21, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over CyberDiner Internet Cafe Systems, in view of the Blue Ginger webpage at the Boston Globe website, as applied to claims 9-14 above, and further in view of Koether (US 5,875,430).

CyberDiner Internet Cafe Systems comprises a restaurant, the restaurant having personal computers (personal digital assistants) connected to a local area network (LAN), the local area network being connected to a wide area network (WAN), the wide area network being the Internet, for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), as applied above in the rejection of claims 9-14, but the particular connection method(s) of the personal digital assistants of CyberDiner Internet Cafe Systems to the CyberDiner local area network, whether wired or wireless, is not specifically disclosed.

However, Koether discloses a restaurant connecting various computer devices therein by means of a local area network, the restaurant's local area network being connected to a wide area network, the wide area network being the Internet, the devices thereby being able to access the Internet, and Koether indeed discloses that the connections of the local area network may be either wired or wireless, but, are preferably wireless (see, in particular, Figure 1 and the description thereof in column 5, lines 3-19).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the system and method of CyberDiner, so as to use wireless connections (if not already) for the local area network connecting the personal digital assistants, in accordance with the teachings of Koether, in order to make installation of the network easier.

6. Claims 25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincke et al. (US 6,253,326). See, in particular, Figures 1 and 3.

Lincke et al. disclose a system and method for providing real-time information regarding a restaurant, comprising: providing a portable apparatus 100 operated by a user, wherein the portable apparatus 100 has an input means, a wireless transmission means, and a display 101; providing a form 105 on the display 101 of the portable apparatus 100, wherein the form 105 includes information that the user implements to enter as the real-time information regarding the restaurant, wherein the real-time information includes features of the restaurant, including at least one of the food served at the restaurant, service at the restaurant, and ambiance of the restaurant (see, for example, Figure 3); inputting the real-time information regarding the restaurant into the portable apparatus by the user; processing the real-time information input by the user; and, transmitting the real-time information 305 input by the user to a destination 140 remote from the restaurant, but while Lincke et al. do disclose using the portable apparatus to enter the real-time information regarding the restaurant, they do not disclose doing so while at the restaurant.

However, to those of ordinary skill in the art, accessing the Internet while at a restaurant using a personal digital assistant or other portable computer is certainly a well known, hence obvious, step to follow, since many restaurants are even specially modified to facilitate such access for such devices (e.g., so-called "hot-spots," etc.).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Lincke et al. so as to use the portable apparatus to perform the recited steps while at the restaurant, as is well known to do, in order to be able to obtain current information, pertinent to the user's current activities, in a timely fashion (i.e., to learn more about what the user was interested in and doing at the moment: patronizing the restaurant), and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 27, the portable wireless apparatus 100 of Lincke et al. is a personal digital assistant.

Regarding claims 28-29, the destination 140 of Lincke et al. is a website that is accessible using a portable wireless device.

#### *Response to Arguments*

7. Applicant's arguments filed March 1, 2004 have been fully considered but they are not persuasive.

8. Applicant's arguments with respect to claims 25 and 27-29 have been considered but are moot in view of the new ground(s) of rejection.

9. Regarding the argument that CyberDiner and the blue Ginger webpage at boston.com fail to teach transmitting real-time information regarding a restaurant, the two references when combined, indeed render obvious the transmitting of real-time information regarding a restaurant, because the CyberDiner establishment that provides a patron with access to the Internet to be able to post and review websites such as the Blue Ginger page, is actually a restaurant itself. A patron would be sitting at a table with a computer, using the computer to access restaurant review pages on the Internet (including one for CyberDiner), and being served food and beverage by a waiter, such that the patron could post their review while experiencing the restaurant (i.e., in real-time).

10. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching, suggestion, or motivation to do so found is found in the knowledge generally available to one of ordinary skill in the art. For example, posting on the Internet a Blue Ginger type review of the CyberDiner restaurant, using the Internet access of the CyberDiner establishment to do so, the motivation to do so being a desire to post the review of the restaurant as quickly as possible, while the dining experience was still fresh in the mind of the reviewer.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to the disclosure.

13. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

Inquiries of a general nature or simply relating to the status of the application should be directed to the receptionist, whose telephone number is **(703) 308-1113**.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at **(703) 308-5183**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (fax-back auto-reply receipt service provided). Mailed replies should be addressed to "Commissioner of Patents and Trademarks, Washington, DC 20231." Hand delivered replies should be left with the receptionist on the seventh floor of Crystal Park Five, 2451 Crystal Dr, Arlington, VA 22202.

GJOC



September 17, 2004



ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600  
9/12/04